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10/824,949

04/15/2004

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EXAMINER

KENNY, DANIEL J

ART UNIT

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3633

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | | |
|------------------------------|--------------------------------------|--------------------------------------|--|
| Office Action Summary | Application No. 10/824,949 | Applicant(s) JUEDES ET AL. | |
| | Examiner DANIEL KENNY | Art Unit 3633 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 April 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) 30-33 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 April 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

Claims 30-33 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 2/27/2008.

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the third base must be shown or the feature(s) canceled from the claim 7. No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New

Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-4, and 8-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Harris (6,663,316) in view of Lowery et al. (6,962,029).

Harris discloses an apparatus (10) comprising:

Claim 1 - a lower support base (12);

at least one tendon receiving portion (20a), said tendon receiving portion comprising first and second points (32), said first point and said second point being

configured to move away from each other in a direction generally perpendicular to a downward force (col. 3, lines 41-44), and

at least one connecting leg (16a), said connecting leg connecting said lower support base and said tendon receiving portion.

Harris does not expressly disclose the tendon receiving portion comprising an inner diameter that is smaller than the outer diameter of a tendon. Lowery discloses disclose a tendon receiving portion comprising an inner diameter that is smaller than the outer diameter of a tendon (col. 5, line 18).

It would have been obvious to one of ordinary skill in the art at the time the present invention was made to combine the familiar apparatus of Harris with the tendon receiving portion of Lowery because it does no more than yield predictable results of further securing (beyond the securing already provided by the retaining members) the tendon in the apparatus.

Claim 2 – The at least one connecting leg comprises a plurality of connecting legs, wherein each of said plurality of connecting legs are connected to said lower support base.

Claim 3 – The at least one tendon receiving portion, comprises a plurality of tendon receiving portions, each of said tendon receiving portions comprising a first point and a second point, said first point and said second point being configured to move away from each other in a direction generally perpendicular to a downward force, said

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tendon receiving portion comprising an inner diameter that is smaller than the outer diameter of a tendon.

Claim 4 – The lower support base is a circular (col. 2, line 56) lower support base.

Claim 8 – A substantially circular and flat upper support base;
a plurality of connecting legs are connected to said lower support base (see rejection of claims 5-7); and

a plurality of tendon receiving portions, each of said tendon receiving portions comprising a first point and a second point, said first point and said second point being configured to move away from each other in a direction generally perpendicular to a downward force, said tendon receiving portion comprising an inner diameter that is smaller than the outer diameter of a tendon.

Claim 9 – The at least one tendon receiving portion comprises:

a first tendon receiving portion (22a);
a second tendon receiving portion (20a); and
a third tendon receiving portion (20b).

Claim 10 – A first section of a first tendon inserted into said first tendon receiving portion;

a first section of a second tendon inserted into said second tendon receiving portion; and

a second section of a second tendon inserted into said third tendon receiving portion.

Claim 11 – The first tendon is substantially perpendicular to said second tendon; said first tendon is oriented in a first plane and said second tendon is oriented in a second plane; said first plane and said second plane are substantially parallel; and said first tendon and said second tendon are encased within a slab-on-grade foundation (col. 1, line 13).

Claims 5-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Harris in view of Lowery et al. and in further view of Barrows (2,330,105).

Claims 5-7 - Although Harris does disclose connecting legs connecting the substantially circular and flat support base and the tendon receiving portion, Harris does not disclose multiple circular and flat support bases. The court has held that mere duplication of parts has no patentable significance unless a new and unexpected result is produced. *In re Harza* 274 F.2d 669, 124 USPQ 378 (CCPA 1960). In addition, Barrows discloses that it is old in the art to provide an intermediate brace (30) attached to columns (22) between a base (4) and a receiving portion (14). It would have been obvious to one of ordinary skill in the art at the time the present invention was made to

combine the familiar apparatus of Harris with the brace of Barrows because it does no more than yield predictable results of “preventing a buckling, spreading or collapsing action of the columns” (page 2, lines 57-59).

Claims 12-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Harris in view of Barrows.

Harris discloses a tendon support structure comprising:

Claim 12 – a substantially flat and circular lower support ring (12);

a first tendon-receiving portion coupled to said lower support ring, said first tendon-receiving portion being configured to receive a first tendon, said first tendon defining a first diameter, said first tendon-receiving portion comprising a first point and a second point, said first point and said second point defining a first distance, said first distance being less than said first diameter (col. 3, lines 41-45);

a second tendon-receiving portion coupled to said lower support ring, said second tendon-receiving portion being configured to receive a second tendon, said second tendon defining a second diameter, said second tendon-receiving portion comprising a third point and a fourth point, said third point and said fourth point defining a second distance, said second distance being smaller than said second diameter; and

a third tendon-receiving portion coupled to said lower support ring, said third tendon-receiving portion being configured to receive said second tendon, said third tendon-receiving portion comprising a fifth point and a sixth point, said fifth point

and said sixth point defining a third distance, said third distance being smaller than said second diameter.

Although Harris does disclose connecting legs connecting the substantially circular and flat support base and the tendon receiving portion, Harris does not disclose multiple circular and flat support bases. The court has held that mere duplication of parts has no patentable significance unless a new and unexpected result is produced. *In re Harza* 274 F.2d 669, 124 USPQ 378 (CCPA 1960). In addition, Barrows discloses that it is old in the art to provide an intermediate brace (30) attached to columns (22) between a base (4) and a receiving portion (14). It would have been obvious to one of ordinary skill in the art at the time the present invention was made to combine the familiar substantially flat and circular support ring of the apparatus taught by Harris with the brace of Barrows to yield an intermediate (or upper) substantially flat and circular support ring because it does no more than yield predictable results of “preventing a buckling, spreading or collapsing action of the columns” (page 2, lines 57-59).

Claim 13 – The base and brace of Barrows are positioned within substantially parallel planes.

Claim 14 – A first tendon inserted into said first tendon receiving portion.

Claim 15 – A second tendon inserted into said second tendon receiving portion and said third tendon receiving portion.

Claim 16 - The tendon support structure is encased within a slab-on-grade foundation.

Claim 17 – A first tendon inserted into said first tendon receiving portion; and
a second tendon inserted into said second tendon receiving portion and said third tendon receiving portion.

Claim 18 – The tendon support structure and said first tendon and said second tendon are encased within a slab-on-grade foundation.

Claim 19 – The first substantially flat and circular upper support ring and said second substantially flat and circular lower support ring are connected by a plurality of connecting legs.

Claims 20-28 are an obvious method of using the device of Harris modified by Barrows.

Claim 29 – Harris in view of Barrows discloses all the claimed limitations, including groups of tendons (first sentence of Harris abstract).

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DANIEL KENNY whose telephone number is (571)272-9951. The examiner can normally be reached on Monday thru Friday, 9 am to 5 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Glessner can be reached on (571) 272-6843. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jeanette E Chapman/
Primary Examiner, Art Unit 3633

/D. K./
Examiner, Art Unit 3633